

(2) The contracting officer shall include the contractor's failure to comply with the requirements of this subpart in appropriate databases of past performance and consider any such failure in any responsibility determination or evaluation of past performance; and

(3) In the case of award-fee contracts, the contracting officer shall consider a contractor's failure to comply with the requirements of this subpart in the evaluation of the contractor's performance during the relevant evaluation period, and may treat such failure as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period (see 216.405-2-71).

(b) If the performance failures are significant, severe, prolonged, or repeated, the contracting officer shall refer the contractor to the appropriate suspension and debarment official.

[73 FR 16774, Mar. 31, 2008, as amended at 77 FR 35887, June 15, 2012]

225.370-6 Contract clause.

Use the clause at 252.225-7039, Contractors Performing Private Security Functions, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are to be performed outside the United States in areas of—

(a) Combat and other significant military operations designated by the Secretary of Defense;

(b) Contingency operations (see FAR 2.101);

(c) Humanitarian or peacekeeping operations; or

(d) Other military operations or exercises designated by the combatant commander.

[77 FR 35887, June 15, 2012, as amended at 78 FR 37986, June 25, 2013]

Subpart 225.4—Trade Agreements

SOURCE: 65 FR 19852, Apr. 13, 2000, unless otherwise noted.

225.401 Exceptions.

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for na-

tional security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(1) Purchase from foreign sources is restricted by statute (see subpart 225.70);

(2) Another exception in FAR 25.401 applies to the acquisition; or

(3) Competition from foreign sources is restricted under subpart 225.71.

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1.

[75 FR 81916, Dec. 29, 2010]

225.401-70 End products subject to trade agreements.

Acquisitions of end products in the following Federal supply groups (FSG) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

| FSG | Category/Description |
|-----|---|
| 22 | Railway equipment |
| 23 | Motor vehicles, trailers, and cycles (except 2350 and buses under 2310) |
| 24 | Tractors |
| 25 | Vehicular equipment components |
| 26 | Tires and tubes |
| 29 | Engine accessories |
| 30 | Mechanical power transmission equipment |
| 32 | Woodworking machinery and equipment |
| 34 | Metalworking machinery |
| 35 | Service and trade equipment |

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| FSG | Category/Description |
|-----|--|
| 36 | Special industry machinery (except 3690) |
| 37 | Agricultural machinery and equipment |
| 38 | Construction, mining, excavating, and highway maintenance equipment |
| 39 | Materials handling equipment |
| 40 | Rope, cable, chain and fittings |
| 41 | Refrigeration and air conditioning equipment |
| 42 | Fire fighting, rescue and safety equipment |
| 43 | Pumps and compressors |
| 44 | Furnace, steam plant and drying equipment (except 4470) |
| 45 | Plumbing, heating, and sanitation equipment |
| 46 | Water purification and sewage treatment equipment |
| 47 | Piping, tubing, hose, and fitting |
| 48 | Valves |
| 49 | Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960) |
| 53 | Hardware and abrasives |
| 54 | Prefabricated structures and scaffolding |
| 55 | Lumber, millwork, plywood, and veneer |
| 56 | Construction and building materials |
| 61 | Electric wire, and power and distribution equipment |
| 62 | Lighting fixtures and lamps |
| 63 | Alarm and signal systems |
| 65 | Medical, dental, and veterinary equipment and supplies |
| 66 | Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries |
| 67 | Photographic equipment |
| 68 | Chemicals and chemical products |
| 69 | Training aids and devices |
| 70 | General purpose ADPE, software, supplies, and support equipment |
| 71 | Furniture |
| 72 | Household and commercial furnishings and appliances |
| 73 | Food preparation and serving equipment |
| 74 | Office machines, visible record equipment and ADP equipment |
| 75 | Office supplies and devices |
| 76 | Books, maps, and other publications |
| 77 | Musical instruments, phonographs, and home type radios |
| 78 | Recreational and athletic equipment |
| 79 | Cleaning equipment and supplies |
| 80 | Brushes, paints, sealers, and adhesives |
| 81 | Containers, packaging and packing supplies (except 8140) |

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| FSG | Category/Description |
|-----|---|
| 83 | Pins, needles, and sewing kits (only part of 8315) and flag staffs, flagpoles, and flagstaff trucks (only part of 8345) |
| 84 | Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries |
| 85 | Toiletries |
| 87 | Agricultural supplies |
| 88 | Live animals |
| 89 | Tobacco products (only 8975) |
| 91 | Fuels, oils, and waxes |
| 93 | Nonmetallic fabricated materials |
| 94 | Nonmetallic crude materials |
| 96 | Ores, minerals, and their primary products |
| 99 | Miscellaneous |

[65 FR 19852, Apr. 13, 2000, as amended at 68 FR 15619, Mar. 31, 2003; 69 FR 1927, Jan. 13, 2004; 70 FR 2363, Jan. 13, 2005; 70 FR 73154, Dec. 9, 2005; 71 FR 9270, Feb. 23, 2006]

225.401–71 Products or services in support of operations in Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Afghanistan, if using a procedure specified in 225.7703–1(a)(2) or (3), the procedures of subpart 25.4 are not applicable.

[78 FR 59857, Sept. 30, 2013]

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products covered by trade agreements (*see* 225.401–70).

[70 FR 2363, Jan. 13, 2005]

225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) For acquisitions of supplies covered by the World Trade Organization Government Procurement Agreement, acquire only U.S.-made, qualifying country, or designated country end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and